FOOTHILL-DE ANZA
COMMUNITY COLLEGE DISTRICT

12345 El Monte Rd.
Los Altos Hills, CA 94022
Foothill College
De Anza College

AGREEMENT FOR SERVICES

This agreement is not a construction contract within the meaning of Civil Code section 2783, and is not an agreement for the provision of construction services within the meaning of Public Contract Code section 20651. Do not use for Public Works, Repairs or Maintenance to a Building.

This Agreement entered into as of the District's execution date ("Effective Date"), by and between the Foothill-De Anza Community College District, a public educational agency (hereinafter referred to as "District") and _____, (hereinafter referred to as "Contractor") Each of District and Contractor are sometimes hereinafter referred to as a "Party" and collectively as the "Parties." By signing this Agreement, the Parties acknowledge their acceptance of all the terms and conditions in this Agreement and any Exhibits attached hereto (collectively the "Agreement").

RECITALS

WHEREAS, pursuant to Foothill-De Anza Community College District Board Policy 3140 and Board of Trustees Resolutions, specified District employees have the duty to engage Contractors, including, Independent Contractors, to perform sundry services for the District, with or without the furnishing of material; and

WHEREAS, Contractor warrants and represents to District that Contractor has the experience, expertise, licensure, and resources to successfully and effectively perform the agreed-upon services and will provide these services to the District in compliance with all applicable laws and regulations

WHEREAS, Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of $10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract; and

WHEREAS, the public interest, convenience, necessity and general welfare will be served by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties agree as follows:

1. **AGREEMENT DOCUMENTS.**
   The documents forming the entire Agreement between District and Contractor shall consist of the District Standard Instructions & Conditions (SIC's) and this Agreement (pages 1-7) including:
   Exhibit A – Services (page 8)
   Exhibit B – Insurance Requirements (page 9)
   Exhibit C – Data Security Standards (pages 10-11, if applicable)

   In the event of any discrepancies or inconsistencies between the provisions of the SIC's, this Agreement and the Exhibits, the provisions of this Agreement will prevail.

2. **PAYMENTS.**
   In consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms, conditions and specifications set forth herein and in Exhibit A attached hereto and by this reference made a part hereof. Contractor shall perform all the services described in Exhibit A for the sum of
   Not-to-Exceed: $ _____

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, District shall make payment to Contractor in the manner specified in Exhibit A.3. The District retains the right to increase or decrease the Services, deliverables, or amount of work as it deems appropriate and at its sole discretion.

3. TERM AND TERMINATION.

a. Initial Term. This Agreement shall be in effect from _____ (start date) through _____ (end date). The District may terminate this contract at any time for any reason by providing 30 days' notice to Contractor. Termination to be effective on the date specified in the notice. In the event of termination under this section, Contractor shall be paid for all satisfactorily completed work accomplished prior to the date of termination.

b. Option to Extend. This Agreement may be renewed for additional time periods as long as the original Agreement Term plus the renewal periods does not exceed five years, provided that both Parties agree in writing and insurance coverage continues pursuant to the requirements in Exhibit B.

4. CONTRACTOR DISCLOSURE REQUIREMENTS.

If the Contractor is an individual or sole proprietor, the Contractor is responsible for disclosing in writing any relevant employment history or personal relationships with the District prior to the commencement of services. Individual Contractors are not permitted to perform services under this agreement if they are currently employed by the District in any capacity. If the Contractor is a former employee of the District or a retiree of CalSTRS or CalPERS, the Contractor must disclose this status in writing, as the District is required to report such payments to Payroll Services. Contractors should be aware that CalSTRS publishes an annual post-retirement earnings limit, and compensation received above this limit may result in a reduction of the retiree's annual CalSTRS benefit. Additionally, if the Contractor is related to any current District employee, the Contractor must disclose this relationship in writing and confirm that no actual or perceived conflict of interest exists, pursuant to Board Policy 4115 (Nepotism). Failure to provide accurate and complete written disclosures may result in termination of the agreement or other corrective action as determined by the District. For Contractors operating as corporations, partnerships, or other legal entities, these disclosure requirements apply only to owners, principals, or personnel directly performing services under the Agreement.

5. RELATIONSHIP OF THE PARTIES.

It is understood that this is an Agreement by and between the District and Contractor(s) and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an Independent Contractor.

6. NON-ASSIGNABILITY AND SUBSTITUTION.

Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement. If particular people are identified in Exhibit A as working on this Agreement, the Contractor will not assign others to work in their place without written permission from the District representative. Any substitution shall be with a person of commensurate experience and knowledge.

7. HOLD HARMLESS AND INDEMNIFICATION.

a. General Indemnity – Non-Design Professionals.

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Foothill-De Anza Community College District, its Board of Trustees, officers, officials, agents, employees, and volunteers ("District") from and against any and all claims, damages, losses, liabilities, and expenses,

including attorneys' fees, arising out of or related to the performance of this Agreement, caused in whole or in part by any negligent act or omission of the Contractor, its subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the District. The duty to defend shall arise immediately upon the District's tender of a claim, complaint, or legal action that alleges facts potentially within the scope of this indemnity obligation, and this duty to defend exists independently of any determination of ultimate liability. This indemnity also applies to any claims for taxes arising from the Contractor's failure to properly withhold or remit employment or income taxes as required by law. These obligations shall survive the expiration or termination of this Agreement.

b. Indemnity – Design Professionals (Per Civil Code 2782.8).
If Contractor is a design professional, as defined in California Civil Code § 2782.8 (including architects, landscape architects, professional engineers, or land surveyors), Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the District from and against any and all claims, demands, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional, its employees, or agents in the performance of services under this Agreement. This indemnity shall not apply to claims arising from the sole negligence, active negligence, or willful misconduct of the District, and shall not apply to passive negligence unless caused at least in part by the design professional. The duty to defend shall be limited to the design professional's proportionate share of fault and shall be triggered upon receipt of a written claim or legal proceeding alleging the design professional's negligence, recklessness, or willful misconduct. In no event shall the cost to defend exceed the design professional's proportionate percentage of fault. This indemnity obligation shall not be waived or modified by any contractual provision or act of the parties and shall survive the termination or expiration of this Agreement until any such claim is barred by the applicable statute of limitations.

8. LIMITATION OF LIABILITY.

The District's financial obligations under this Agreement are limited to the payment of the compensation provided in this Agreement and Exhibit A. Notwithstanding any other provision of this Agreement, in no event, shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed

9. INSURANCE.

Contractor agrees to have and maintain, at its sole cost and expense, the insurance policies set forth in Exhibit B (Insurance Requirements), which is attached hereto and incorporated herein. Contractor further agrees to furnish the District with certificates of insurance and all required endorsements prior to the commencement of any work under this Agreement. Failure to furnish such certificates and endorsements shall, at District's option, be treated as a material breach, but shall not waive or limit Contractor's obligation to maintain the required coverage, and such coverage shall extend to and protect the District as specified in Exhibit B, regardless of whether proof of insurance has been provided.

10. DATA SECURITY STANDARDS.

If applicable to the services provided, the Contractor shall implement appropriate measures to ensure the confidentiality and security of all data handled on behalf of the District. These measures shall include protections against anticipated threats or hazards to the integrity or security of such information, prevention of unauthorized access or disclosure, and any other actions necessary to prevent substantial harm to the District or to any individual whose information is in the Contractor's custody. When applicable, the Contractor shall also comply

with the District's Data Security Standards, as set forth in Exhibit C, which is attached hereto and incorporated herein. All information received or accessed in the course of performing this Agreement shall be treated in strict accordance with these standards.

11. SECTION 508 ACCESSIBILITY COMPLIANCE.

Contractor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under this Agreement comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services, which is brought to its attention. Contractor further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California community college using the Contractor's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Agreement.

12. OWNERSHIP OF WORK PRODUCT AND INTELLECTUAL PROPERTY.

This Agreement is intended to be, and shall be construed as, a "work for hire" agreement to the extent permitted by law. All reports, documents, designs, software, and other materials specifically created for and delivered to the District under this Agreement (collectively, "Work Product") shall be deemed works made for hire and shall be the sole and exclusive property of the District. To the extent any such Work Product does not qualify as a work made for hire under applicable law, Contractor hereby irrevocably assigns all right, title, and interest in and to such Work Product to the District.

Notwithstanding the foregoing, any intellectual property, tools, methodologies, or materials developed by the Contractor independently of this Agreement, or that were in existence prior to its execution ("Pre-Existing IP"), shall remain the sole property of the Contractor. However, to the extent any Pre-Existing IP is incorporated into the Work Product, the Contractor grants the District a non-exclusive, royalty-free, irrevocable, and perpetual license to use, reproduce, and modify such Pre-Existing IP solely as necessary to utilize the Work Product and/or for the District's internal purposes.

13. NON-DISCRIMINATION.

No person shall, on the grounds of race, color, national or ethnic origin, religious affiliation or non-affiliation, gender, marital status, sexual orientation, age, physical or mental disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement. Contractor shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's personnel policies shall be made available to District upon request.

14. CONFIDENTIALITY.

In performing its duties hereunder, the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by The Family Education and Privacy Act (FERPA), 20 U.S.C. Section 1232g and Education Code section 76243. The Parties agree that such incidental access is not a provision or conveyance or disclosure to Contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall promptly notify the District, refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

15. FORCE MAJEURE.

a. General. Neither party hereto shall be deemed to be in default of any provision of this Agreement, or for any failure in performance, resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such "force majeure" acts or events shall include, but may not be limited to, acts of God, civil or military authority, civil disturbance, martial disturbance, strikes, war, federally or locally declared public health emergencies or natural disasters including pandemics, plagues, famines, droughts, fires, floods, loss of utility such as electricity or water, other catastrophes, or other "force majeure" events beyond the parties' reasonable control.

b. Notification. Either party shall notify the other in writing as soon as first party knows, or should reasonably know, that a force majeure event has occurred. Provided, District's notification regarding whether a force majeure event has occurred shall be final and binding on the parties.

c. Losses. Contractor is not entitled to damages, compensation, or reimbursement from District for losses resulting from any "force majeure" event.

16. HEALTH AND SAFETY REQUIREMENTS.

Contract shall be subject to all District requirements regarding health and safety protocols and must abide by Federal, State, Local government and District's procedures and policies while on District premises.

17. CHANGES AND ALTERATIONS.

This Agreement shall constitute the entire agreement between the parties respecting the matters covered herein, and supersedes any prior or contemporaneous written or oral promises or representations regarding these matters. This Agreement may not be modified or amended except in writing signed by the parties. No changes, alterations, change orders or increases in Contractor compensation, or other variations of any kind, shall occur without the written consent of appropriate authorized District personnel acting within their signatory authority. Contractor acknowledges that other District personnel are without authorization to either order extra and/or changed work, increase compensation, or waive contract requirements, and that Contractor proceeds with any extra work ordered by such unauthorized persons at its own risk, and shall not receive payment therefore.

18. MEDIATION, ARBITRATION, PREVAILING PARTY ATTORNEY'S FEES.

The parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement or its subject matter, they will participate in good faith in Mediation and agree to equally share all Mediator fees. If the Parties are unable to resolve the dispute or controversy through Mediation, the Parties agree pursuant to Code of Civil Procedure section 1280 et seq. to submit the pending dispute or controversy to final and binding Arbitration to be held in Santa Clara County, California, with the arbitrator to be supplied by JAMS. By agreeing to this binding Arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke certain rules of procedure and evidence. The non-prevailing party in such arbitration shall be responsible for the arbitrator's fee but in all other respects each side shall bear its own costs and attorneys and other fees. The provisions of this section will apply during the term of this Agreement and survive after the termination or expiration of this Agreement.

19. PAYMENT OF PREVAILING WAGES. (if applicable)

Except for agreements for a total of $1000 or less, if Contractor provides public project services Contractor shall pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7.

20. APPROVAL BY BOARD OF TRUSTEES.

Pursuant to Education Code Section 81655, this Agreement is not valid and does not constitute an enforceable obligation against the District unless and until the District's Board of Trustees has approved or ratified this Agreement as evidenced by a motion duly passed and adopted by the Board of Trustees.

21. GOVERNING LAW; VENUE.

The rights and obligations of the parties hereunder shall be governed by the laws of the State of California. Venue in any action to enforce or declare rights hereunder shall be in the Superior Court of the County of Santa Clara, and any such action to be stayed by the Court pending contractual Mediation/Arbitration.

22. NOTICE.

All Notices required or permitted to be given under this Agreement by either party to the other, shall be in writing and given, served, and received, if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or sent by overnight delivery services, or facsimile transmissions, addressed as follows:

For Contractor:
Name: _____
Title: _____
Address: _____
City, State, Zip: _____
Phone: _____
Email: _____

For District:
Name: _____
Title: _____
Address: _____
City, State, Zip: _____
Phone: _____
Email: _____

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In Witness Hereof, the Parties have entered into the Agreement on the day and year set forth beneath the respective names below.

FOR CONTRACTOR:	**FOR DISTRICT:**
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

This Agreement is not valid until signed by both Parties above. Board approval is required prior to commencement of services if total cost exceeds the applicable bid threshold for goods and services as reflected on the following Purchasing website link: http://purchasing.fhda.edu/bid-threshold/index.html

FOR CAMPUS USE ONLY:

Originator: _____ Date: _____

FOAP: I _____ F _____ O _____ A _____ P _____

Campus Finance/Fiscal Services Authorization:

Name: _____ Signature :_____

Title: _____ Date: _____

EXHIBIT A - SERVICES

1. **CONTACTS FOR RENDERING OF SERVICES**.

For Contractor:	For District/Department:
Primary Contact Name: _____	Primary Contact Name: _____
Primary Contact Email: _____	Primary Contact Email: _____
Primary Contact Phone: _____	Primary Contact Phone: _____

2. **SCOPE OF WORK**. Detailed description of services to be performed and work product to be delivered to District by Contractor: (reference and attach additional pages, if necessary)

3. **AMOUNT AND METHOD OF PAYMENT**. Indicate lump sum payment or rate of pay; also include a list of tasks which must be completed prior to each progress payment and show the timeline for progress payments, if applicable)

___ Single payment upon successful completion of deliverables.

___ Multiples payments. Explain how payments will be made. (i.e., milestone payments, monthly payments, progress payments, etc.

4. **TERM**. The term of this Agreement shall commence and end on the dates specified in Section 3 of the Agreement.

EXHIBIT B – INSURANCE REQUIREMENTS

Contractor shall not commence work under this Agreement until the required certificate(s) of insurance have been submitted to the District. Certificates shall be issued by an insurer with an A.M. Best rating of A-VII or better, unless otherwise approved by the District Risk Manager. Each certificate shall evidence all coverages and limits required by this Agreement and shall state that the insurer(s) will provide the District with thirty (30) days' prior written notice of cancellation or non-renewal. The Description of Operations section must state: "The Foothill-De Anza Community College District, its officers, employees, and agents are added as additional insureds." The Certificate Holder shall be listed as: Foothill-De Anza Community College District, 12345 El Monte Rd., Los Altos Hills, CA 94022. The Contractor's obligation to maintain the required insurance coverage is independent of any failure by the Contractor to furnish certificates or endorsements. Failure to provide such documentation shall not be construed as a waiver of the Contractor's insurance obligations under this Agreement. The District's failure to verify or enforce compliance with these insurance requirements at any time shall not be deemed a waiver of any rights under this Agreement.

Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. **Commercial General Liability** insurance, with limits not less than $1,000,000 each occurrence/$2,000,000 aggregate for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, sexual assault & molestation, broadform property damage, independent contractors, products and completed operations.
2. **Commercial Automobile Liability** insurance, with limits not less than $1,000,000 each occurrence for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable. This coverage is required if vehicles will be used in the performance of services under the Agreement.
3. **Workers' Compensation** (statutory limits) and Employers' Liability insurance with limits required by law, provided that Contractor has employees as defined by the California Labor Code.
4. **Professional Liability / Errors & Omissions** insurance with limits not less than $1,000,000 each claim/$2,000,000 aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed $50,000 each claim. This coverage is required if the services provided involve the application of specialized professional knowledge, skill, or judgment (e.g., design, consulting, legal, financial, or technical services), as determined by the District.
5. **Cyber Liability** insurance with limits not less than $1,000,000 per occurrence or claim/$2,000,000 in the aggregate. This coverage is required whenever the Contractor will access, collect, store, transmit, or otherwise handle any of the following types of information in connection with the performance of this Agreement: Personally Identifiable Information (PII), student records, financial data, or other confidential or sensitive District data, as determined by the District.
6. **Other Insurance Provisions.** The District shall be entitled to the benefit of any broader coverage or higher limits maintained by the Contractor, regardless of the minimum insurance requirements stated herein, and such coverage shall be made available to the District for any claims arising out of this Agreement. Commercial General Liability and Automobile Liability policies shall name the District, its officers, officials, employees, and agents as additional insureds using ISO forms CG 20 10 and CG 20 37 or their equivalents, and shall provide primary and non-contributory coverage. Contractor agrees to waive all rights of subrogation against the District, and shall ensure that its insurers provide endorsements to effectuate such waivers as applicable. If any required coverage is written on a claims-made basis, the Contractor shall maintain such coverage for a minimum of three (3) years following the termination or expiration of this Agreement. Maintenance of the required insurance is a material condition of this Agreement. Failure to maintain such coverage shall be deemed a material breach and may result in suspension of work or termination of the Agreement at the District's sole discretion.

EXHIBIT C – DATA SECURITY STANDARDS

1. **Security.** Contractor shall provide District with general system security including: (a) physical security of the hosting location, (b) limiting access to District's stored information to individual Contractor employees directly connected with maintaining the database or the associated application software; (c) plans for managing disaster recovery. For purposes of this Exhibit C and the Agreement, "Security Breach" means any actual or reasonably suspected (a) unauthorized access to, or acquisition, use, disclosure, modification, or destruction of, District Data or User Data; (b) compromise of the security, confidentiality, integrity, or availability of District Data or User Data, or of any system, application, or facility used by Contractor or its subcontractors to store, process, or transmit such data, including ransomware or other malicious code; or (c) loss or theft of any device or media containing District Data or User Data. A Security Breach includes any "breach of the security of the system" as defined in California Civil Code Section 1798.82 and any unauthorized disclosure of education records under the Family Educational Rights and Privacy Act (FERPA). A Security Breach does not include unsuccessful attempts that do not compromise the security of District Data or User Data, such as pings, port scans, or blocked log-in attempts.

2. **Return of Materials.** Upon expiration or termination of this Agreement or the licenses granted hereunder, District shall immediately return to Contractor all Licensed Software/Technology and Documentation provided to District, as well as any and all copies thereof. Contractor agrees to cooperate with District to facilitate the retrieval and download of all District data collected by and stored in the Licensed System. Upon District's receipt of the data, Contractor will certify that all District data has been thoroughly and completely removed from the Licensed System.

3. **Ownership of District Data.** District, and/or its suppliers and affiliates, retains all right, title and interest (including, without limitation, all proprietary rights) to District Data and District Applications except for rights granted to Contractor and its affiliates under this Agreement. Except as otherwise provided herein, upon termination or cancellation of this Agreement for any reason, Contractor shall return all District Data to District in an agreed upon format, or destroy, at District's option.

4. **Data Security.** Contractor has implemented and shall maintain at least industry acceptable standard systems and procedures to ensure the security, confidentiality and integrity of District Data and to reasonably protect against anticipated threats or hazards to the security or integrity of User Data, and against unauthorized access to, use or disclosure of User Data.

5. **Nondisclosure of User Data.** Contractor shall hold all User Data in strict confidence and with the same standard of care it uses to protect its own information of a similar nature and shall not use User Data for any purpose other than to provide the Service or as may be authorized in writing by District. Contractor shall not disclose User Data to any other party except: (a) to Contractor employees, agents, subcontractors and service providers, to whom User Data needs to be disclosed for the purpose of providing the Service; (b) as required by law, or to respond to duly authorized information requests of police and governmental authorities or to comply with any facially valid subpoena or court order; (c) protect the rights or property of Contractor or Contractor customers, including the enforcement of Contractor agreements or policies governing District's use of the Service; or (d) as authorized by District in writing. Contractor shall undertake efforts reasonably calculated to ensure that Contractor employees, agents, and subcontractors with access to User Data are aware of Contractor's obligations under this Agreement and are placed under an obligation of confidentiality with respect thereto.

6. **Cooperation with Law Enforcement.** To the extent permitted by law, Contractor reserves the right to involve and cooperate with law enforcement or the appropriate legal authorities in investigations of claims of illegal or unauthorized activity involving the Service or any users thereof, violations of applicable laws, to protect Contractor Systems and Contractor's customers and to respond to any violations of this Agreement. District agrees that

Contractor is authorized to monitor communications into, and out of, Contractor Systems to prevent the introduction of viruses or other hostile code, to prevent intrusions, and to otherwise enforce the terms of this Agreement. District further agrees that Contractor may, in its sole discretion, disclose any and all District Data including, without limitation, assigned IP numbers, Service history, and Service use to any law enforcement agent for the purposes specified herein or where Contractor receives a facially valid and lawful search warrant, court order, subpoena or other valid legal order from law enforcement officials, without further consent of District or Users. Notwithstanding the foregoing and to the extent permitted by law and law enforcement, Contractor will make reasonable efforts to notify District when a disclosure of District's Data has or is to be made.

7. **Third Party Requests.** If Contractor receives a request from any third party, including but not limited to subpoenas, court orders, requests from law enforcement or regulatory authorities, or public records requests under the California Public Records Act or similar laws ("Third-Party Request"), Contractor shall, unless prohibited by law or by the terms of the request: (a) promptly notify the District of its receipt of such request in a manner permitted by law; and b) comply with the District's reasonable instructions regarding efforts to limit, oppose, or otherwise respond to the request.

8. **Security Breach.** Contractor will notify District of a Security Breach within seven (7) days of Contractor's verification of a Security Breach. The notification shall include, to the extent possible, (a) the identification of each User whose data has been, or is reasonably believed to have been accessed, acquired, used, or disclosed; (b) the nature of the Security Breach; (c) the date of, and the date of discovery of the Security Breach; (d) a brief description of the types of data that were involved; (e) any steps that Users should take to protect themselves from potential harm resulting from the Security Breach; and (f) a brief description of Contractor's efforts to investigate the Security Breach, mitigate harm to Users, and protect against further Security Breaches. In addition, Contractor shall immediately conduct a reasonable investigation of the reasons for and circumstances surrounding such Security Breach; use best efforts and take all necessary actions to prevent, contain, and mitigate the impact of, such Security Breach; collect and preserve all evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Security Breach, which shall meet reasonable expectations of forensic admissibility. Any information Contractor provides to District regarding a Security Breach shall be treated as Confidential Information and subject to the requirements of Section14.

9. **Breach Notification.** District agrees that it shall be District's sole responsibility to determine whether a Security Breach is subject to state, federal or national breach notification laws and requires breach notification ("Breach Notification"). In the event that District determines that a Security Breach requires Breach Notification, Contractor agrees that (a) where applicable law requires Contractor to accomplish breach notification, it shall promptly do so while keeping District apprised of its efforts; and (b) Contractor will reasonably cooperate with District in regard to District's Breach Notification obligations as specified in state, federal or national breach notification laws, including District's investigation, enforcement, monitoring, document preparation, Breach Notification requirements and reporting, in cases where District is responsible for notifying all individuals subject to Breach Notification.

10. **Indemnification by Contractor.** Except to the extent arising from the intentional or negligent acts of the District or its officers, employees, subcontractors and agents, Contractor shall, to the extent permitted by law, defend and hold harmless District, against any and all claims, injuries, damages, costs, penalties, actions, losses or suits, including reasonable attorneys' fees, of a third party alleging (a) that District's use of the Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party; or (b) arising out of or based on a Security Breach. If a Security Breach occurs and is found to be the result of Contractor's breach of its duty to employ the Information Security and results in a Breach Notification obligation, subject to the limit stated in Exhibit B – item 5, Contractor will be liable for reasonable associated costs incurred by District in responding to or recovering from said Security Breach.